APPEAL NO. 032895
FILED DECEMBER 19, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on October 13, 2003. With respect to the issues before him, the hearing officer determined that the respondent's (claimant) date of maximum medical improvement (MMI) and impairment rating (IR) cannot be determined from the evidence and, thus, that the claimant should be examined by a second designated doctor to determine MMI and IR. In its appeal, the appellant (carrier) argues that the hearing officer erred in not giving presumptive weight to the report of Dr. R, the designated doctor selected by the Texas Workers' Compensation Commission (Commission) and in not determining that the claimant reached MMI on October 17, 2002, with an IR of zero percent, as certified in that report. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, and that Dr. R was selected by the Commission to serve as the designated doctor. On October 17, 2002, Dr. R examined the claimant and certified that she had reached MMI on that date with a zero percent IR. The claimant had undergone a wrist surgery and a right knee surgery for her compensable injury prior to her examination by Dr. R. The claimant underwent an MRI of the right knee on October 16, 2002. In a report dated October 25, 2002, Dr. JR, an orthopedic surgeon, evaluated the claimant's October 16, 2002, MRI and determined that it revealed an anterior tear of the lateral meniscus with femoral chondromalacia in the region of the tear and joint effusion of the knee. Dr. JR recommended that the claimant undergo a second arthroscopic surgery on the right knee. Dr. JR performed surgery on November 27, 2002. The claimant underwent a course of physical therapy and pain management following the second arthroscopic surgery and the claimant's treating doctor, Dr. L, certified that she reached MMI on June 9, 2003, with a nine percent IR. Three letters of clarification were sent to the designated doctor about the surgery that the claimant underwent about one month after the date of MMI certified by the designated doctor. In each of the letters, the designated doctor opined that the claimant did not need the surgery that was performed on November 27, 2002, and that he would not change the date of MMI or the IR as a result of the surgery.

The hearing officer did not err in not giving presumptive weight to the designated doctor's October 17, 2002, MMI date and zero percent IR. We have long recognized that the designated doctor's failure to consider the entire compensable injury in determining the date of MMI and assessing the IR is a valid reason to reject the designated doctor's opinion. Texas Workers' Compensation Commission Appeal No. 950913, decided July 20, 1995; Texas Workers' Compensation Commission Appeal No.

941428, decided December 7, 1994. In this instance, there was conflicting evidence on the issue of whether the claimant had damage or harm to the physical structure of her right knee as a result of her compensable injury that necessitated the second arthroscopic surgery of November 27, 2002. Contrary to the carrier's assertion, it was incumbent upon the hearing officer to determine whether the claimant's compensable injury included the conditions in the knee that precipitated the second knee surgery in order to resolve the issues of MMI and IR. The hearing officer determined that the claimant's compensable injury caused damage to the physical structure of her knee and that the second surgery was performed to treat that damage or harm to the knee. His determination in that regard is supported by sufficient evidence and is not so contrary to the great weight of the evidence as to compel its reversal on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Accordingly, the hearing officer did not err in determining that the designated doctor's report was not entitled to presumptive weight because the designated doctor refused to consider the conditions that necessitated the second surgery in determining the date of MMI and assigning the IR. Thus, under the guidance of Appeal Nos. 950913 and 941428, the hearing officer properly rejected the designated doctor's report.

The hearing officer also did not err in determining that he could not adopt the report of the claimant's treating doctor. The treating doctor's Report of Medical Evaluation (TWCC-69) was not accompanied by supporting documentation or a narrative report and, as such, the hearing officer could not determine if the certification had been performed in accordance with the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). Thus, he could not adopt that certification.

Finally, we find no merit in the carrier's challenge to the hearing officer's determination that a second designated doctor must be appointed in this case. As noted above, the Commission has sought clarification from the designated doctor on three occasions and he has steadfastly refused to consider the second knee surgery and its effect on the date of MMI and the IR based upon his belief that the surgery was not reasonable and necessary treatment for the claimant's compensable injury. The hearing officer rejected the designated doctor's opinion in that regard and we affirmed his decision to do so. Going back to the designated doctor for yet a fourth time would seem to serve no other purpose than to further delay resolution of the MMI and IR issues. Thus, we cannot agree that the hearing officer erred in determining that a second designated doctor should be appointed in this case to assign an MMI date and an IR for the claimant's compensable injury.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **UNITED STATES FIDELITY & GUARANTY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Edward Vilano
Appeals Judge